

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**WILLIAM DURLING, JAMES MORTON,
JR., TOM WOLFF, MICHAEL MORRIS
and RICHARD SOBOL**, for themselves and
all others similarly situated,

Plaintiffs,

v.

PAPA JOHN’S INTERNATIONAL, INC.,
Defendant.

Case No.7:16-cv-3592-CS-JCM

Class / Collective Action

DECLARATION OF JEREMIAH FREI-PEARSON

I, Jeremiah Frei-Pearson, declare pursuant under penalty of perjury to 28 U.S.C. § 1746 that the foregoing is true and correct:

1. I am a founding partner of the law firm of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP (“FBFG”), co-counsel for Plaintiffs in the above-captioned case.
2. I respectfully submit this Declaration in support of Plaintiffs’ Renewed Motion for Conditional Certification (“Motion”).

Defendant Has Delayed Production Of Documents Vital To Plaintiffs’ Case

3. Plaintiffs’ document requests sought documents and data from Defendant relating to reimbursement and wages paid to delivery drivers at Papa John’s franchisee stores.
4. Because all Papa John’s stores record the reimbursement and wage data necessary to prosecute this case on Defendant’s proprietary point-of-sale system, Plaintiffs reasonably believed that this data was transmitted to Defendant and they could obtain all necessary discovery in this action from Defendant.
5. However, Defendant represented during numerous meet-and-confer conversations, and in its Responses and Objections to Plaintiffs’ Requests for Production of Documents that

Plaintiffs would be required to obtain data and information relating to franchisees directly from the franchisees through third-party subpoenas because PJI does not have access to data and information regarding drivers' identities and wages at franchisee stores.

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. On January 6, 2017 the day after the 30(b)(6) deposition, during a meet and confer call between the Parties, Plaintiffs informed Defendant that they intended to move for sanctions based on Defendant's misrepresentations concerning its access to franchisee records.

8. On January 6, 2017, Plaintiffs requested leave to move for sanctions against Defendant based on Defendant's mischaracterization of its access to franchisees' records. Dkt. No. 103. Defendant argued that further conferral was required (Dkt. No. 104) and the Honorable Magistrate Judge McCarthy agreed with Defendant. Dkt. No. 105.

9. On January 9, 2017 Plaintiffs wrote Defendant a letter explaining in detail their basis for seeking sanctions and demanding that Defendant immediately produce the improperly withheld franchisee records. A copy of this letter is attached as Exhibit W. Defendant responded with a letter arguing that sanctions were inappropriate. A copy of that letter is attached as Exhibit X.

10. Plaintiffs did not receive any documents or data from Defendant concerning delivery drivers' wages or reimbursements at franchisee-owned stores until after Plaintiffs requested leave to move for sanctions against Defendant and after the close of briefing on Plaintiffs' Motion for Conditional Certification.

11. Defendant produced the Microsoft Excel spreadsheet associated with Bates Number DURLING-PJI 27317 (the “Franchisee Store Spreadsheet” attached hereto as Exhibit B) on March 9, 2017, 48 days after the completion of briefing on Plaintiffs’ Motion for Conditional Certification was filed with the Court and 246 days after Plaintiffs first served discovery requests seeking this data. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Defendant produced the Microsoft Excel spreadsheets associated with Bates Numbers DURLING-PJI 172384-172385 (the “Reimbursement Spreadsheets” attached hereto as Exhibit C) on April 21, 2017, 91 days after the completion of briefing on Plaintiffs’ Motion for Conditional Certification was filed with the Court and 289 days after Plaintiffs first served discovery requests seeking this data. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. Had Defendant timely produced the information contained in the Franchisee Store Spreadsheet and Reimbursement Spreadsheets, Plaintiffs would have cited the information in their original motion for conditional certification. However, Defendant repeatedly represented to

Plaintiffs that it did not possess and/or could not produce the information contained in the Reimbursement Spreadsheets.

15. To date, Defendant has not produced any emails other than those already produced in *Perrin v. Papa John's Int'l, Inc.*, No. 09-1335 (E.D. Mo.).

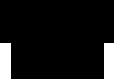
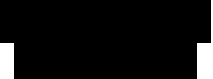



16. As a result, Plaintiffs have been unable to take any depositions other than a 30(b)(6) deposition relating to the location and format of documents and data (these depositions were necessary to force Defendant to produce the Reimbursement Spreadsheets). This deposition was later divided into two separate depositions when one of Defendant's three designated witnesses became unable to attend the originally-scheduled deposition.

17. For the Court's convenience, below is a chart summarizing the declarations by drivers that Plaintiffs submit in support of the Motion. [REDACTED]

[REDACTED]

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Benner, Robert	2747 Street Road Bensalem, PA	October 2012 to September 2015	PJPA, LLC BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)
	934 Bustleton Pike Feasterville, PA	October 2012 to September 2015	PJPA, LLC BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)
	6543 Roosevelt Blvd. Philadelphia, PA	October 2012 to September 2015	PJPA, LLC BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Berutti, Anthony	706 North 13 th Street Allentown, PA	October 2012 to January 2016	PJPA, LLC. BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Blau, Emanuel	2747 Street Road Bensalem, PA	October 2012 to January 2016	PJPA, LLC BAJCO	65 (PJPA, LLC) 118 (BAJCO)
	934 Busleton Pike Feasterville, PA	October 2012 to January 2016	PJPA, LLC BAJCO	65 (PJPA, LLC) 118 (BAJCO)
				
Boyland, Joshua	370 Festus Centre Drive Festus, MO	July 2016 to August 2016	PJI, INC.	702 (US) (PJI)
	1270 Main Street Imperial, MO	September 2016 to November 2016	PJI, INC.	702 (US) (PJI)
	1201 Water Tower Place Arnold, MO	January 2017 to March 2017	PJI, INC.	702 (US) (PJI)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Casey, Timothy	925 Turner McCall Boulevard, Rome, GA	2006 to November 14, 2010	QS America, LLC PJ United, Inc.	18 (QS America, LLC) 153 (PJ United, Inc.)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Durling, William	187 Church Street Poughkeepsie, NY	January 2015 to June 2015	Oney Bayside, LLC	9 (Oney Bayside, LLC)
Figueroa, Joseph M.	817 Linden Street Bethlehem, PA	October 2008 to June 2012	PJI, INC PJPA, LLC	702 (US) (PJI) 65 (PJPA, LLC)
	1236 Main Street Hellertown, PA	September 2014 to April 2015	Saucon Valley PJ LLC.	1 (Saucon Valley PJ, LLC)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Glenn, Robert S.	185 Eagleview Blvd. Exton, PA	March 2012 to October 2014	PJPA, LLC BAJCO, LLC	65 (PJPA, LLC.) 118 (BAJCO)
	701 South High Street West Chester, PA	March 2012 to September 2013 (On Occasion)	PJPA, LLC	65 (PJPA, LLC.)
Hagan, Thomas	3312 West Main Street Dothan, AL	2002 to 2006	R & L Enterprises, Inc.	19 (R& L Enterprises, Inc.)
	2810 Ridge Pike Norristown, PA	August 2011 to December 2012	PJPA, LLC	65 (PJPA, LLC)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Heagy, Cynthia	2612 Penn Avenue Reading, PA	April 2007 to January 2015	PJPA, LLC BAJCO	65 (PJPA, LLC) 118 (BAJCO)
Hine, John	204 Shoemaker Road Pottstown, PA	March 2012 to October 2013; October 2014	PJPA, LLC	65 (PJPA, LLC)
	1042 Mill Creek Road Allentown PA	December 2013 to December 2014	PJ Mill Creek, LLC	1 (PJ Mill Creek, LLC)
James Jiron, Jr.	2810 Ridge Pike Norristown, PA	November 2010 to July 2012; 2015	PJPA, INC BAJCO	65 (PJPA, LLC) 118 (BAJCO)
Johnson, David	701 South High Street West Chester, PA	Spring 2010; Summer 2013 to Summer 2014	PJPA, INC BAJCO	65 (PJPA, LLC) 118 (BAJCO)
	185 Eagleview Blvd. Exton, PA	August 2015	BAJCO	118 (BAJCO)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Kahn, Sardar	4814 Dale Blvd. Dale City, VA	2004 to June, 2011	North Central Virginia Restaurants	24 (North Central Virginia Restaurants)
	Commerce St. Manassas, VA	2004 to June, 2011	North Central Virginia Restaurants	24 (North Central Virginia Restaurants)
	13560 Minnieville Rd. Woodbridge, VA	2004 to June, 2011	North Central Virginia Restaurants	24 (North Central Virginia Restaurants)
	390 York Road Warminster, PA	June, 2011 to Present	PJPA, LLC BAJCO	65 (PJPA, LLC) 118 (BAJCO)
Keich, Dwayne	706 North 13th Street Allentown, PA	1997 to September 2011	Unknown Owner PJPA, LLC	65 (PJPA, LLC)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Kreider, Keith	2850 St. Lawrence Avenue, Redding, PA	1999 to 2015	PJPA, LLC BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)
Lombardo, Joseph	701 South High Street West Chester, PA	November 2012 to February 2016	PJPA, LLC BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)
	Store Relocated to 510 East Gay Street West Chester, PA	February 2016 to Present	BAJCO	118 (BAJCO)
Merrill, Pat	136 Elkton Rd., Newark, DE	November 1997 to 2001	PJI, INC.	702 (US) (PJI)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Merrill, Pat (cont.)	137 Elkton Rd., Newark, DE	2001 to 2006	Unknown Owner	Unknown
	181 East Main Street, Newark, DE	2006 to Present	PJPA, LLC	65 (PJPA, LLC)
Morris, Michael	386 Main Street Middletown, DE	December 2011 to January 2013	PJPA, LLC	65 (PJPA, LLC)
James Morton, Jr.	1002 West Ridge Pike Conshocken, PA	May 2009 to September 2013	PJPA, LLC BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)
	6001 Ridge Avenue Roxborough, PA	May 2009 to September 2013	PJPA, LLC BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)
	139 East DeKalb Pike King of Prussia, PA	May 2009 to September 2013	PJPA, LLC BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Nelson, Aaron	7456 South Sam Street, Littleton, CO	September 2016 to March 2017	PJI, INC.	702 (US) (PJI)
	1745 Wadsworth Blvd Lakewood, CO	September 2016 to March 2017	PJI, INC	702 (US) (PJI)
	1111 East Colfax Avenue Denver, CO	September 2016 to March 2017	PJI, INC	702 (US) (PJI)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Rhodes, Brent	204 Shoemaker Road Pottstown, PA	May 2006 to July 2011	PJI, INC. PJPA, LLC	702 (US) (PJI) 65 (PJPA, LLC)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Riedel, Joseph	110 N Cedar Ridge Drive Duncanville, TX	October 2002 to July 2003	It's About Time Pizza, Inc.	Bankrupt
	1300 Old Chain Bridge Rd Mclean, VA	March 2009 to September 2009	Colonel's Limited, LLC	61 (Colonel's Limited, LLC)
	222 Lantana Drive Hockessin, DE	July 2012 to September 2013	PJPA, LLC	65 (PJPA, LLC)
Ruebeck, Lenard	259 E. Basin Road New Castle, DE	2009 to 2010	PJI, INC	702 (US) (PJI)
	3403 Lancaster Pike Wilmington, DE	August 2011 to June 2013	PJPA, LLC	65 (PJPA, LLC)
Sobol, Richard	5363 Dixie Highway Louisville, KY	2011 to Present	PJI, INC.	702 (US) (PJI)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Steckert, Robert C.	175 Washington Road Princeton, NJ	6 months in 2011	PJPA	65 (PJPA, LLC)
	400 U.S. Highway 130 East Windsor, NJ	2014 to 2015	Rajputra Brothers, Inc.	11 (Rajputra)
	14 Route 9 Morganville, NJ	2014 to 2015	Rajputra Brothers, Inc.	11 (Rajputra)
	5 Mission Road Trenton, NJ	3 months in 2015	MSHK Corporation	1 (MSHK)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Sutliff, Jason	204 Shoemaker Toad Pottstown, PA	Late 1990s	Unknown	Unknown
	1002 Ridge Pike Conshocken, PA	2010 to 2012	PJPA, LLC	65 (PJPA, LLC)
	139 East Dekalb Pike King of Prussia, PA	2010 to 2012	PJPA, LLC	65 (PJPA, LLC)
	2810 Ridge Pike Norristown, PA	2010 to 2012	PJPA, LLC	65 (PJPA, LLC)
Tourville, Jesse	300 South View Plaza O'Fallon, Illinois	December 2013 to June 2015	PJI, INC	702 (US) (PJI)
Vazquez, Juan	204 Shoemaker Road Pottstown, PA	2000 to Present	Two Unknown Owners PJPA, LLC BAJCO	65 (PJPA, LLC) 118 (BAJCO)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Vazquez, Juan (cont.)	2515 North Fifth Street Highway Reading PA	2000 to Present	Two Unknown Owners PJPA, LLC BAJCO	65 (PJPA, LLC) 118 (BAJCO)
	2612 Penn Avenue Reading PA	2000 to Present	Two Unknown Owners PJPA, LLC BAJCO	65 (PJPA, LLC) 118 (BAJCO)
	2850 Saint Lawrence Ave Reading PA	2000 to Present	Two Unknown Owners PJPA, LLC BAJCO	65 (PJPA, LLC) 118 (BAJCO)
Wieck, Christopher	175 Washington Road Princeton, NJ	October 2007 to October 2011	PJI, INC. PJPA, LLC	702 (US) (PJI) 65 (PJPA, LLC)
Williams, Charles	479 Route 38 Maple Shade, NJ	2002 to 2010	PJI, INC. PJPA, LLC	702 (US) (PJI) 65 (PJPA, LLC)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Williams, Charles (cont.)	Cherry Hill, NJ	2010	PJPA, LLC	65 (PJPA, LLC)
	175 Washington Road Princeton, NJ	2011	PJPA, LLC	65 (PJPA, LLC)
	617 Stokes Road Medford, NJ	2012	PJPA, LLC	65 (PJPA, LLC)
	42 S. White Horse Pike Somerdale, NJ	2013 to present	PJPA, LLC PJMBTH, LLC	65 (PJPA, LLC) 1 (PJMBTH, LLC)
Wolff, Tom	617 Stokes Road Medford, NJ	September 2012 to October 2014	PJPA, LLC	65 (PJPA, LLC)
Woodside, Thomas	Limestone Road Wilmington, DE	2000/2001 to 2003	PJI, Inc.	702 (US) (PJI)

Declarants	Address of Stores Worked	Approximate Dates Worked	Owner(s) of Stores	Approximate Number of Papa John's Stores Owned By Owner
Woodside, Thomas (cont.)	3403 Lancaster Pike Avenue Wilmington, DE	2008 to 2011	PJPA, LLC	65 (PJPA, LLC)
Wurst, Darren	2810 Ridge Pike Norristown, PA	October 2009 to September 2013	PJPA, Inc. BAJCO, LLC	65 (PJPA, LLC) 118 (BAJCO)

Exhibits

18. True and correct copies of the following are attached:

- Exhibit A – Transcript of March 29, 2017 Proceedings Before Hon. Judge Cathy Seibel.
- Exhibit B – The “Franchisee Store Spreadsheet,” Bates Number DURLING-PJI 27317.
- Exhibit C – The “Reimbursement Spreadsheets,” Bates Number DURLING-PJI 172384-172385.
- Exhibit D – Plaintiffs’ First Requests for Production of Documents.
- Exhibit E – Plaintiffs’ First Interrogatories.
- Exhibit F – Plaintiffs’ First Requests for Admissions.
- Exhibit G – Defendant’s Objections and Responses to Plaintiffs’ First Request for Production of Documents.
- Exhibit H – Defendant’s Responses to Plaintiffs’ First Request for Admissions.
- Exhibit I – Email from Andrew White to Gina Merrill and Jason Priebe.

- Exhibit J – Transcript of October 5, 2016 Discovery Hearing Before Hon. Magistrate Judge Judith C. McCarthy.
- Exhibit K – Relevant pages from Papa John’s International Form 10-K Filing for Fiscal Year 2016.
- Exhibit L – Relevant pages from Papa John’s Operations Manual.
- Exhibit M – Relevant pages from Papa John’s Franchise Restaurant Team Member Handbook.
- Exhibit N – Relevant pages from Papa John’s Virtual Back Office / Back Office Accounting Guide.
- Exhibit O – Relevant pages from Papa John’s Franchise Disclosure Document and Franchise Agreement.
- Exhibit P – Online Job Postings for Delivery Driver Positions with Papa John’s Restaurants.
- Exhibit Q – IRS Standard Mileage Rates.
- Exhibit R – Relevant pages from the 30(b)(6) Deposition of Shelly Theiss.
- Exhibit S – Relevant pages from the 30(b)(6) Deposition of Simon Smith and Jeff Bunch.
- Exhibit T – List of Online Delivery Areas for Papa John’s Stores.
- Exhibit U – Relevant pages from Expert Report of Christopher C. Pflaum, Ph.D.
- Exhibit V – Relevant pages from Papa John’s Corporate Restaurant Mileage Reimbursement chart.
- Exhibit W – January 9, 2017 Conferral Letter from Jeremiah Frei-Pearson.
- Exhibit X – January 10, 2017 Response Letter from Gerald L. Maatman, Jr.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 30, 2017 in White Plains, New York.

**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**

By: /s/ Jeremiah Frei-Pearson
Jeremiah Frei-Pearson